Securities and Exchange Commission PHILIPPINES

BAGONG PILIPINAS

OFFICE OF THE GENERAL COUNSEL

11 September 2024

SEC OGC Opinion No. 24-23
Re: Term Limit of Board of Directors of a Country Club

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Gentlemen:

This refers to your letter[1], requesting, on behalf of **ALABANG COUNTRY CLUB, INC. ("ACCI")**, for an opinion in relation to the term limit of the Board of Directors of the corporation, particularly whether ACCI can continue to elect its directors for three (3)-year terms in accordance with its By-laws, until such time ACCI secures the necessary corporate approvals for such amendment and the Commission approves the same.

You mentioned that ACCI is a domestic corporation incorporated on 21 August 1978, with a primary purpose of promoting social, recreational and athletic activities on a non-profit basis among its stockholders, the core of which will be the acquisition and maintenance of a polo field, golf field course and tennis courts, and other similar facilities.

According to you, Article VII, Section 2 (b) of ACCI's By-laws provides that its Directors shall be elected to 3-year terms:

> ARTICLE VII- THE BOARD OF DIRECTORS
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> Section 2 – Election of Directors
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> a. At the first Annual Stockholders' meeting when the voting rights of all shares shall be revived as provided for under Section 7 of Article VI hereof, there shall be elected nine (9) members of the Board of Directors. During said election, the first three (3) directors receiving the highest number of votes shall serve for a term of three (3) years; the three (3) other directors receiving the next highest number of votes shall serve for a term of two (2) years; and the remaining three (3) directors shall serve for a term of one (1) year. In the event that two (2) or more of the elected directors garnered identical number of votes, the tie shall be decided by a simple drawing of lots among the tied directors to determine the term of office of each. The drawing of lots shall be conducted and supervised by the Nomination and Election Committee to be created in accordance with Section 2 (d) of this Article.
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> **b. Every year thereafter, at the annual stockholders' meeting, there shall be elected three (3) directors who shall serve for a term of three (3) years.**
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[1] Letter-Request of Añover Añover Sandiego & Primavera Law Offices dated 21 July 2023.

On the other hand, Section 22 of the Revised Corporation Code (RCC) explicitly states:

> SEC. 22. The Board of Directors or Trustees of a Corporation; Qualification and Term. – Unless otherwise provided in this Code, the board of directors or trustees shall exercise the corporate powers, conduct all business, and control all properties of the corporation. Directors **shall** be elected for a term of **one (1) year** from among the holders of stocks registered in the corporation's books, while trustees shall be elected for a term not exceeding three (3) years from among the members of the corporation. Each director and trustee shall hold office until the successor is elected and qualified. A director who ceases to own at least one (1) share of stock or a trustee who ceases to be a member of the corporation shall cease to be such. xxx

You averred that coinciding with the submission of ACCI's Information Statement for its general meeting on 14 April 2023, the Commission's Corporate Governance and Finance Department ("CGFD") asked ACCI to execute and submit an undertaking to amend its By-laws wherein the term limit of its directors is not in accordance with Section 22 of the RCC, which provides for the maximum term limit of directors to only one (1) year.

On 21 March 2023, the President of ACCI, Mr. Abelardo Villacorta, executed and submitted the required undertaking stating therein that ACCI undertakes to amend its Articles of Incorporation (AOI) and By-laws on or before 12 April 2024.[2]

ACCI is of the position that until such time the amendment to its By-laws changing the term of its directors from 3 years to 1 year has been properly approved by its directors and stockholders and duly approved by the Commission, ACCI can continue electing its directors with terms of 3 years. It cited the case of *Forest Hills Golf and Country Club vs. Gardpro*[3] and *SEC-OGC Opinion No. 22-07*[4], where adherence to the By-laws and importance of approval of amendments were discussed for purposes of enforcement and effectivity.

Hence, your query.

The Commission recognizes that many golf, country or sports clubs have been registered as "Stock, Non-Profit" corporations because they issue shares of stock or proprietary membership certificates representing a proprietary interest in the club facilities.

In a string of cases, the Commission had consistently and categorically classified these "stock, non-profit" golf, country and sports clubs as **stock** corporations.[5]As such, they should comply with the provisions on stock corporations under the RCC.

In this connection, in the case of *Loyola Grand Villas Homeowner's (South) Assn., Inc. vs. Court of Appeals*[6], the Court held that By-laws may be necessary for the government of the corporation, but they are nevertheless subordinate to the AOI, as well as to the RCC and related statutes. In other words, the By-laws must not be contrary to the provisions of the RCC and other laws. More so, the fact that the provisions of the By-laws, which are contrary to law, have not been questioned for several years cannot forestall the challenge to their validity. Neither can the By-laws provisions attain validity through acquiescence because,

[2] Undertaking dated 21 March 2023 attached to the letter.
[3] G.R. No. 164686, 22 October 2014.
[4] SEC-OGC Opinion No. 22-07. Re: Board of Directors or Trustees of a Corporation; Residency Requirement, 26 May 2022.
[5] Fairways & Bluewater Resort Golf and Country Club vs. Corporate Governance and Finance Department, SEC En Banc Case No. 03-17-424, 23 July 2019; Forest Hills Golf and Country Club Inc. vs. Company Registration and Monitoring Department, SEC En Banc Case No. 06-14-334, 23 July 2019; Sherwood Hills Golf Club Inc. vs. Atty. Justina F. Callangan, SEC En Banc Case No. 02-10-195, 23 July 2019.
[6] 276 SCRA 681, 697 (1997).

if they are contrary to law, it is beyond the power of the members of the association to waive their invalidity.[7]

Thus, for a stock corporation, a 3-year term for the Board of Directors is a void by-law provision as it contradicts or fails to comply with superior legal standards, such as the 1-year term under Section 22 of the RCC. Since the provision is invalid, it cannot be enforced or acted upon. It is as though the provision does not exist in the By-laws. Hence, the parties are obliged to abandon the void by-law provision and subscribe to what the law mandates.

As to ACCI's citation of SEC-OGC Opinion No. 22-07, the facts and circumstances therein should be distinguished from those in the case at bar.

In SEC-OGC Opinion No. 22-07, we opined that the removal of the residency requirement for board of directors under the RCC does not ipso facto warrant disregard of such residency requirement if the By-Laws of the subject corporation still mandates the same. This is because Section 46(f) of the RCC still allows a corporation the option or discretion to provide in its By-Laws additional qualifications of its directors that it may deem necessary.

Thus, to settle the issue of whether the corporation chooses to adopt the removal of the residency requirement under Section 22 or opts to avail of its right under Section 46(f) to impose additional qualification of its directors, e.g. the residency requirement, then it must amend its By-Laws accordingly.

However, the same principle does not apply in this case wherein Section 22 on term of board members is explicitly restrictive and mandatory in character, i.e. there is no legal wiggle room to deviate from the rule that directors shall be elected for a term of one (1) year **only** from among the holders of stocks registered in the corporation's books.

It is now settled that the provisions of the law are deemed written into the AOI and the By-laws. In several opinions[8] involving educational institutions which were granted perpetual term of existence by the old Corporation Law[9], it was emphasized that corporations, including these educational institutions, were subsequently mandated by the Corporation Code[10] to have a maximum corporate term of fifty (50) years. However, the Code afforded such institutions a transitory period of two (2) years from the date of its effectivity to amend their corporate term to 50 years in accordance with Section 11 of the Code[11]. In case of failure on the part of the affected corporations to amend their AOI to comply with Section 11, the Commission opined that such provision on 50-year corporate term limit is deemed written into their AOI as of 1 May 1980, the effectivity date of the Code[12].

Given the foregoing, a stock corporation is obliged to follow the 1-year term for board of directors under the RCC even if the corporation ultimately fails to correct and amend an invalid By-law provision, because the same is deemed written into the said By-laws.

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[7] Aquino, T and Aquino, M., Commentaries and Jurisprudence on the Revised Corporation Code, 2020, page 533 citing the case of Grace Christian High School vs. CA.
[8] SEC-OGC Opinion No. 01-13, Re: Corporate Term of Educational Corporations Registered Under Corporation Law, March 21, 2013; SEC-OGC Opinion No. 05-13, Re: Corporate Term of Educational Corporations Registered Under Corporation Law, April 24, 2013; SEC-OGC Opinion No. 19-48, Re: Corporate Term of Educational Institutions, October 7, 2019.
[9] Act No. 1459, the Corporation Law, 1 March 1906.
[10] Batas Pambansa Blg. 68, the Corporation Code, 1 May 1980.
[11] Section 11. Corporate term. – **A corporation shall exist for a period not exceeding fifty (50) years from the date of incorporation unless sooner dissolved or unless said period is extended. The corporate term as originally stated in the articles of incorporation may be extended for periods not exceeding fifty (50) years** in any single instance by an amendment of the articles of incorporation, in accordance with this Code; Provided, That no extension can be made earlier than five (5) years prior to the original or subsequent expiry date(s) unless there are justifiable reasons for an earlier extension as may be determined by the Securities and Exchange Commission
[12] Supra, note 8.

It shall be understood that the foregoing opinion is rendered solely on the basis of the facts, circumstances and documents disclosed/submitted, and should be considered relevant solely to the particular issue raised therein. It shall not be used in the nature of a standing rule binding upon the Commission in other cases or upon the courts whether of similar or dissimilar circumstances.[13] If upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered null and void.

Please be guided accordingly

ROMUALD C. PADILLA
General Counsel

[13] Paragraph 7, SEC Memorandum *Circular* No. 15, Series of 2003.